IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, ET AL.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO. H-01-3624
	§	AND CONSOLIDATED CASES
ENRON CORPORATION, ET AL.,	§	
	§	
Defendants.	§	

RESPONSE IN SUPPORT OF COURT'S ORDER OF CONSOLIDATION AND OPPOSITION TO OBJECTION TO CONSOLIDATION BY *AMERICAN NATIONAL* PLAINTIFFS

THE HONORABLE JUDGE OF THIS COURT:

Defendant Michael J. Kopper ("Kopper") files this response in support of the Court's order of consolidation and in opposition to the objection to consolidation (Dkt. No. 363) filed by American National Insurance Company, American National Investment Accounts, Inc., SM&R Investments, Inc., American National Property and Casualty Company, Standard Life and Accident Insurance Company, Farm Family Life Insurance Company, Farm Family Casualty Insurance Company, and National Western Life Insurance Company (collectively referred to as "the *American National* Plaintiffs"). In support thereof, Kopper would respectfully show the Court as follows:

1. On December 12, 2001, this Court ordered that all actions in this district arising from, or relating to, the financial difficulties of Enron Corporation were to be consolidated. Order of Consolidation. Specifically, the Court found:

> These cases all arise from a common core of operative facts. They are filed against common defendants. Many of the cases contain identical claims. The legal issues will overlap. Much of the discovery will be common to all the cases.

Id. at 17. Further, the Court ordered that all actions filed in this district against specified defendants be automatically consolidated before this Court. *Id.* at 18.

2. On February 28, 2002, this Court entered an order consolidating the case filed by the *American National* Plaintiffs, Civil Action No. G-02-0084, into the above-captioned *Newby* case. Twenty-four of the twenty-eight defendants named by the *American National* Plaintiffs are named in the list of defendants included in the Court's December 12, 2001 Order of Consolidation.

3. The *American National* Plaintiffs do not deny that their claims arise out of the same common core of alleged facts as the *Newby* cases. Nor do they dispute that their claims are filed against defendants also named in other *Newby* cases, and that much discovery would be common to all of the consolidated *Newby* cases. They do not challenge the Court's finding that consolidation will avoid unwarranted duplication of discovery and motion practice. The *American National* Plaintiffs do not even dispute that most of the legal issues will overlap. Instead, they claim that, because certain elements of certain of their "state law" claims differ from federal causes of action, the consolidation will not promote judicial economy, but will tend to create jury confusion. No explanation for these conclusions is provided.

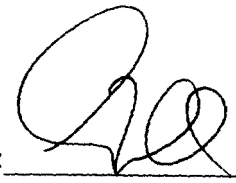
4. The courts are "vested with broad discretionary authority to consolidate cases in the interests of efficiency and judicial economy." *Pittman v. Memorial Herman Healthcare,* 124 F. Supp.2d 446, 449 (S.D. Tex. 2000). Consolidation is proper when cases involve common questions of law and fact and the district judge finds that it would avoid unnecessary costs or

delay. *St. Bernard General Hosp. v. Hospital Serv. Ass'n of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983), *cert. denied,* 466 U.S. 970 (1984). The Enron-related litigation meets these tests. The consolidation of these actions will avoid considerable confusion, repetition, and increased costs.

5. Moreover, just as they fail to specify their concerns over "jury confusion" between state and federal claims, the *American National* Plaintiffs likewise fail to address or recognize the manner in which their concerns over potential "jury confusion" could be addressed at the time of a trial through well-crafted instructions to the jury. Courts routinely instruct juries in multiple causes of action, involving different elements, but arising out of the same factual circumstances. In *Primavera Familienstiftung v. Askin,* 173 F.R.D. 115 (S.D.N.Y. 1997), certain plaintiffs also complained that the consolidation of their state law fraud claims into a case raising federal securities law violations would cause them prejudice. However, the court held that consolidation was appropriate where the predicate acts were the same and where there were substantial similarities between the common law fraud claims and the federal securities law violations. *Id.* at 130.

6. "Trial judges are urged to make good use of Rule 42a of the Federal Rules of Civil Procedure ... in order to expedite the trial and eliminate unnecessary repetition and confusion." *Dupont v. Southern Pacific Co.*, 366 F.2d 193, 195 (5th Cir. 1966), *cert. denied,* 386 U.S. 958 (1967). This Court has done so. As a result, Kopper respectfully requests that his Court deny the *American National* Plaintiffs' objection to consolidation.

Respectfully submitted,



By: _____

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CERTIFICATE OF SERVICE

This pleading was served in compliance with the Rules 5b of the Federal Rules of Civil Procedure on March 27, 2002, to all counsel on the attached Service List.

Eric J.R. Nichols